

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #9	CCRB Case #: 201606907	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/10/2016 6:38 AM	Location of Incident: [REDACTED]	Precinct: 120	18 Mo. SOL 2/10/2018	EO SOL 2/10/2018	
Date/Time CV Reported Wed, 08/10/2016 7:12 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 08/10/2016 7:12 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Tina Stuart	03291	927973	WARRSEC
2. DT3 Brian Risano	04995	934111	WARRSEC
3. DT3 Daniel Castillo	212	945566	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Brian Risano	Abuse: Detective Brian Risano damaged § 87(2)(b) property.	[REDACTED]
B.DT3 Tina Stuart	Abuse: Detective Tina Stuart threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
C.DT3 Brian Risano	Abuse: Detective Brian Risano entered § 87(2)(b) [REDACTED] in Staten Island.	[REDACTED]
D.DT3 Tina Stuart	Abuse: Detective Tina Stuart entered and searched § 87(2)(b) [REDACTED] in Staten Island.	[REDACTED]
E.DT3 Daniel Castillo	Abuse: Detective Daniel Castillo searched § 87(2)(b) [REDACTED] in Staten Island.	[REDACTED]
F.DT3 Tina Stuart	Abuse: Detective Tina Stuart refused to provide her shield number to § 87(2)(b) [REDACTED]	[REDACTED]
G.DT3 Daniel Castillo	Abuse: Detective Daniel Castillo refused to provide his shield number to § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On August 10, 2016, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System. On August 11, 2016, § 87(2)(b) filed a duplicate complaint with the Internal Affairs Bureau via telephone, generating IAB log number 2016-28960. On August 17, 2016, IAB forwarded this complaint to the CCRB.

On August 10, 2016, at approximately 6:38 a.m., Det. Tina Stuart, Det. Brian Risano, and Det. Brian Castillo of Staten Island Warrant Squad arrived at § 87(2)(b) residence at § 87(2)(b) in Staten Island in search of her son, § 87(2)(b) for whom Det. Stuart possessed two active bench warrants. § 87(2)(b) told the officers that § 87(2)(b) was not present, and that he did not reside with her. § 87(2)(b) refused to let the officers into her residence, and pushed her metal front door closed. After the door was closed, Det. Risano kicked the door four times, warping the door (**Allegation A**). § 87(2)(b) then opened her door and Det. Stuart allegedly said, "I can lock you up right now (**Allegation B**).\" Det. Risano entered § 87(2)(b) residence, followed by Det. Stuart and Det. Castillo, without § 87(2)(b) permission (**Allegations C and D**). Det. Stuart and Det. Castillo searched the apartment for § 87(2)(b) and Det. Castillo opened § 87(2)(b) kitchen cabinets and stove (**subsumed in Allegations D; Allegation E**). § 87(2)(b) asked Det. Stuart and Det. Castillo for their shield numbers and Det. Stuart allegedly ignored her request and offered no response (**Allegation F**). Det. Castillo spelled his name and allegedly provided Det. Stuart's shield number as his own (**Allegation G**). The officers left § 87(2)(b) residence without finding § 87(2)(b) § 87(2)(b) § 87(2)(b) was not issued any summonses or placed under arrest as a result of this incident.

§ 87(2)(g)

This case has video evidence, a Snag-It copy of which have been placed below. Please note that the full video is embedded in IA#63 and can be found in Board Review 01.



201606907_20160912_1314_DM.mp4

Mediation, Civil and Criminal Histories

- This case was deemed ineligible for mediation due to the damage sustained to § 87(2)(b) door as a result of Det. Risano's kicks.
- § 87(2)(b) has filed an electronic Property Damage or Loss Claim with the Office of the New York City Comptroller seeking \$1,050.00 for a new front door, two locks, and repairs to her doorframe (Board Review 02).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) was involved (Board Review 04).
- Det. Tina Stuart has been a member of the NYPD for 15 years and has 13 prior CCRB allegations involving eight cases with no substantiated allegations (Board Review 05).

- In case number 201110772, Det. Stuart was the subject of an Abuse – Premises Entered and/or Searched allegation. This allegation was closed as unsubstantiated.
- Det. Stuart was the subject of Abuse – Refusal to Provide Name/Shield Number allegations in case numbers 200406840 and 200813811, both of which were closed as complainant unavailable.
- Det. Brian Risano has been a member of the NYPD for 12 years and has one prior CCRB allegation involving one case with no substantiated allegations (Board Review 06). § 87(2)(g)
- Det. Daniel Castillo has been a member of the NYPD for four years and has seven prior CCRB allegations involving three cases with three substantiated allegations (Board Review 07).
 - In case number 201403223, Det. Castillo was the subject of Abuse – Premises Entered and/or Searched and Abuse – Property Damaged allegations, both of which were closed as substantiated. The CCRB recommended a penalty of Command Discipline – A, which the NYPD subsequently imposed.
 - In case number 201502519, Det. Castillo was the subject of an Abuse – Premises Entered and/or Searched allegation which was closed as substantiated. The CCRB recommended a penalty of Command Discipline – B and the NYPD has yet to impose a penalty on Det. Castillo for this allegation.
 - Det. Castillo has been the subject of Abuse – Premises Entered and/or Searched allegations in case numbers 201307682 (two allegations; one exonerated, one closed as victim uncooperative), 201403223 (substantiated), and 201502519 (substantiated).

Potential Issues

- The investigation was unable to obtain the two bench warrants in question because they were cancelled § 87(2)(b) shortly after this incident, when Det. Stuart encountered § 87(2)(b) in court. However, the Warrant Investigative Data for both warrants was obtained (Board Review 08).

Findings and Recommendations

Allegations Not Pleaded

- **Abuse of Authority: Premises Entered** – Surveillance footage from a security camera affixed above § 87(2)(b) front door (Board Review 01) reveals that when Det. Castillo returned from the rear of the residence, Det. Stuart and Det. Risano were already inside § 87(2)(b) home. Det. Castillo’s entry into § 87(2)(b) home is therefore not pleaded, and only his search of the home is analyzed in Allegation E.

Allegation A – Abuse of Authority: Detective Brian Risano damaged § 87(2)(b) property.

Allegation C – Abuse of Authority: Detective Brian Risano entered § 87(2)(b) in Staten Island.

Allegation D – Abuse of Authority: Detective Tina Stuart entered and searched § 87(2)(b) in Staten Island.

§ 87(2)(b) stated that Det. Stuart came to her door with a bench warrant for her son, § 87(2)(b) (Board Review 08), and that she told Det. Stuart that § 87(2)(b) did not live at § 87(2)(b). Det. Stuart allegedly told § 87(2)(b) that she had to search the residence; however,

§ 87(2)(b) refused to let her do so without a search warrant. § 87(2)(b) entered her residence and closed and locked her metal front door. An officer, whom § 87(2)(b) believed to be Det. Castillo, then kicked the door four times, resulting in warping to the door. § 87(2)(b) opened the door and Det. Castillo and Det. Stuart allegedly entered § 87(2)(b) residence and searched for § 87(2)(b). § 87(2)(b) stated that as a result of the damage to her door, she was no longer able to open or close her door and had to enter and exit her residence through the back door.

§ 87(2)(b) daughter, § 87(2)(b) who was inside § 87(2)(b) home at the time of the incident, generally corroborated § 87(2)(b) account of the incident. She stated that § 87(2)(b) did not believe the document that Det. Stuart showed her was a warrant.

§ 87(2)(b) neighbor and tenant, § 87(2)(b) also gave an account of the incident generally consistent with § 87(2)(b). § 87(2)(b) did not know which officer kicked the door.

Photographs taken by § 87(2)(b) show that the door is warped around the door knob and locking mechanism (Board Review 09). On September 2, 2016, the undersigned visited § 87(2)(b) residence and confirmed that her front door was unable to be opened. § 87(2)(b) provided receipts from Home Depot showing that she purchased a new door and locking mechanism on September 10, 2016 (Board Review 10).

Surveillance footage from a security camera affixed above § 87(2)(b) front door (Board Review 01) shows § 87(2)(b) entering her residence after arguing with Det. Stuart. Det. Stuart then turned towards Det. Risano, who approached the door from out of the frame and immediately kicked the door four times. The door opened and then Det. Risano entered § 87(2)(b) residence, followed by Det. Stuart.



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Det. Stuart stated that she went to § 87(2)(b) pursuant to one active felony bench warrant and one active misdemeanor bench warrant for § 87(2)(b). Det. Stuart identified herself as the investigating officer and stated that there were no supervisors or higher-ranking officers present at the scene. Det. Stuart confirmed § 87(2)(b) residence from his arrest reports from § 87(2)(b) both of which listed his address as § 87(2)(b) and noted that each of his unsealed arrest reports listed his address as § 87(2)(b). Det. Stuart did not know whether she had any reason to believe that § 87(2)(b) was home at the time of her arrival at § 87(2)(b). When asked whether she investigated where § 87(2)(b) would be at the time of her arrival at § 87(2)(b), Det. Stuart stated that the address he gave on his arrest reports led her to believe that he would be home at § 87(2)(b). Det. Stuart stated that no other officers researched § 87(2)(b) whereabouts prior to their arrival at § 87(2)(b). When asked whether an officer may forcibly enter a residence with only a bench warrant without any information indicating that the suspect is home aside from the address being written on prior arrest reports, Det. Stuart answered affirmatively and said, “A warrant is a warrant. It doesn’t matter.” Det. Stuart had no search warrants or any additional warrants for § 87(2)(b) in her possession, but she stated that the bench warrants granted her the

authority to enter the residence and search each area where § 87(2)(b) could possibly hide. After reviewing the warrants, § 87(2)(b) allegedly said, “My son ain’t fucking here,” and began to raise her voice. Det. Stuart noted that she was originally not going to enter the residence because § 87(2)(b) was initially calm and polite. However, when § 87(2)(b) began behaving anxiously and belligerently, Det. Stuart decided that the officers were going to enter the residence because § 87(2)(b) behavior raised her suspicion that § 87(2)(b) was present in the residence. § 87(2)(b) did not want to let Det. Stuart into the residence and attempted to make her way back into the residence as they spoke. At no point did § 87(2)(b) provide consent for the officers to enter her residence, but Det. Stuart noted that § 87(2)(b) did not say that the officers could not come in. At no point did Det. Stuart ask § 87(2)(b) if she could enter the residence. § 87(2)(b) said, “He’s not here,” entered her residence, and then attempted to close her door. Det. Stuart stated that Det. Risano approached the door and placed his foot in the door in order to prevent § 87(2)(b) from slamming the door onto Det. Stuart’s arm and that neither Det. Risano nor any other officer kicked the door. Det. Stuart did not observe any damage being sustained to § 87(2)(b) door and did not hear § 87(2)(b) complain of any damage to her door. When presented with photographs of damage to § 87(2)(b) door, Det. Stuart stated that she did not recognize this damage and that the officers did not perform any action that resulted in this damage.

§ 87(2)(b) was unable to successfully close the door and pulled the door back open. Det. Stuart told § 87(2)(b) that she had two warrants to enter her residence and ordered her to take her upstairs and walk her through the apartment. Det. Stuart called for Det. Castillo, who was positioned at the rear of the residence, to come with her upstairs while Det. Risano stood by the front door to watch the van. Det. Stuart stated that Det. Risano did not climb the stairs to § 87(2)(b) residence. Det. Stuart and Det. Castillo searched the residence and found nothing noteworthy (see Allegation E).

After reviewing the surveillance footage during her CCRB interview, Det. Stuart stated that her recollection as to how § 87(2)(b) door was opened was refreshed. She stated that she did not know whether the door was fully closed when Det. Risano began to kick it and that she did not believe it was fully closed because § 87(2)(b) later swung the door open. Det. Stuart stated that Det. Risano kicked the door in such a manner because he believed that § 87(2)(b) was present in the residence and that § 87(2)(b) was attempting to hide him. Det. Stuart stated that § 87(2)(b) warrants were cancelled later that day, when she observed § 87(2)(b) in court. Det. Stuart did not know that § 87(2)(b) was going to be in court prior to her arrival at § 87(2)(b) and did not recall doing any research to determine when his next court date was prior to her arrival at the location.

Det. Risano identified Det. Stuart as the investigating officer and the officer in charge of the entry. Det. Risano did not do any research into whether § 87(2)(b) was home at the time of the officers’ arrival at § 87(2)(b) and was not aware of Det. Stuart or Det. Castillo doing so. While Det. Stuart and § 87(2)(b) spoke at the door, Det. Risano stood near the police van and was unable to see them or hear their conversation. Det. Risano noted that the conversation between Det. Stuart and § 87(2)(b) began to get loud, which led him to believe that § 87(2)(b) was present in the residence. Det. Risano explained that he believed § 87(2)(b) was inside § 87(2)(b) because he listed it as his address on his arrest reports. Det. Risano stated that he has encountered

numerous similar situations when an individual would not allow officers to enter a location although the officers had a warrant that permitted them to do so. Det. Risano saw Det. Stuart appear to fall, step, or get thrown back, which he stated was indicative of a problem. Det. Risano did not know what caused Det. Stuart to fall back. Det. Risano ran from the van to the closed front door. Det. Stuart did not converse with Det. Risano at all while she was at the door and did not explain what caused her to move back. Det. Risano kicked the front door two to four times. Det. Risano noted that it was his decision to kick the door because “there was a problem at the door,” the door was “slammed” on Det. Stuart, and because the officers had an active felony warrant for § 87(2)(b) who resided at the location and was on probation for a firearm. Det. Risano further explained that he has dealt with numerous warrants in the pasts when people attempted to hide an individual from officers and did not allow the officers to enter a location that they were authorized to enter with the warrant. Det. Risano stated that it is “[his] job” to enter the location. When asked whether it was a bench warrant that he had in his possession, Det. Risano stated, “A warrant is a warrant. It could be a bench warrant, and arrest warrant, a search warrant, or a *inaudible* warrant. It’s a warrant.” When asked to explain, Det. Risano stated, “A warrant is a warrant. It’s issued by a judge.” When asked whether he had a search warrant in his possession, Det. Risano replied, “I had a warrant to search for a person,” and then said, “I had a warrant in my possession. I’ve dealt with search warrants in narcotics. We get the warrants, but for people.” When asked whether he could enter a location with only a bench warrant if the only information that he had that the suspect was present was an address listed on prior arrest reports, Det. Risano stated that his suspicion that § 87(2)(b) was present was raised as a result of the raised voices at the front door, Det. Stuart “facing the problem” entering the residence, and § 87(2)(b) being “a very serious individual who was wanted.”

Det. Risano did not recall the officers requesting § 87(2)(b) consent to enter her residence or § 87(2)(b) volunteering or refusing her consent. Det. Risano did not know whether the door he kicked was fully closed or latched. When asked whether the door was damaged, Det. Risano stated that he was not paying attention to the door and that his intention was to enter § 87(2)(b). Det. Risano did not hear § 87(2)(b) complain of any damage to her door. When presented with a photograph of damage to § 87(2)(b) front door, Det. Risano stated that he did not know whether the damage existed prior to his arrival at the location. Det. Risano and Det. Stuart entered the residence and walked up the stairs, followed by Det. Castillo. Det. Stuart and Det. Castillo passed Det. Risano and began conducting their search of the residence and then Det. Risano immediately went back downstairs to the front of § 87(2)(b). After reviewing the surveillance footage, when asked whether he observed the moment that Det. Stuart fell back, Det. Risano stated that Det. Stuart did not fall and pointed out that Det. Stuart turned around at 02:54. Det. Risano stated that this movement indicated to him that something was wrong.

Det. Castillo stated that he was making his way from the rear of § 87(2)(b) when Det. Risano kicked the door. Det. Castillo also identified Det. Stuart as the investigating officer and directed the undersigned’s inquiries regarding the investigative steps taken prior to the officers’ arrival at § 87(2)(b) to Det. Stuart. Det. Castillo was unaware of the investigative steps taken by Det. Stuart that led the officers to § 87(2)(b).

Det. Stuart possessed two bench warrants for § 87(2)(b) both of which were cancelled on § 87(2)(b) (Board Review 08). § 87(2)(b) address is listed as § 87(2)(b) in Staten Island on each of his unsealed arrest reports (Board Review 11).

According to People v. Smith (806 N.Y.S.2d 447; Board Review 12), “It has consistently been held that entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant... Exigent circumstances and consent constitute exceptions to the warrant requirement and thereby permit entry without a warrant. A bench warrant, which is the equivalent of an arrest warrant, permits entry into what police reasonably believe to be the suspect's residence provided that at the time of the entry police reasonably believe that the suspect is present.”

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: Detective Tina Stuart threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that after Det. Risano kicked the door, she opened the door and Det. Stuart repeatedly said, “I can lock you up right now,” before she entered her home. § 87(2)(b) stated that she asked the officers what she could be arrested for and she did not recall if Det. Stuart told her what she could be arrested for. § 87(2)(b) did not hear any officers say anything about potentially arresting § 87(2)(b) and § 87(2)(b) did not hear any officers threaten to arrest § 87(2)(b) was not arrested.

Det. Stuart stated that initially there was no cause to arrest § 87(2)(b) but that there would have been cause to arrest her for assault on a police officer had she slammed the door on her arm. Det. Stuart noted that she explained to § 87(2)(b) that she would have been arrested for assault on a police officer if the door slammed on her. Det. Stuart stated that neither she nor any other officer told § 87(2)(b) “I can lock you up right now,” or threatened to arrest § 87(2)(b)

Det. Risano did not recall any officer saying, “I can lock you up right now,” or threatening to arrest § 87(2)(b) surveillance footage (Board Review 01) reveals that Det. Castillo was not present at the front door when Det. Stuart allegedly made this statement.

Patrol Guide Procedure 208-01 (Board Review 12) states that an officer may make an arrest without a warrant for an offense when he or she possesses reasonable cause to believe an offense was committed in his or her presence.

§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Detective Daniel Castillo searched
§ 87(2)(b) **in Staten Island.**

§ 87(2)(b) alleged that Det. Castillo entered her home and searched her kitchen, including the cabinets above and below her counter, and her stove. § 87(2)(b) stated that Det. Castillo came upstairs, walked past her, and went to the kitchen. She did not see what PO Castillo did in

the kitchen because she could not see into the kitchen from where she was standing, but she heard § 87(2)(b) say, “Why would he be in the stove? He’s not here.” § 87(2)(b) did not know whether Det. Castillo opened any cabinets. § 87(2)(b) was not present inside § 87(2)(b) residence.

Photographs of the kitchen and the stove taken by the undersigned can be found in Board Review 13. The stove has a clear window on its door, and a light inside the stove illuminates when the door is opened. There are three metallic racks inside the stove.

Det. Castillo stated that he searched anywhere a person could hide, including the stove and the kitchen cabinets under the counter. Det. Castillo stated that he has found someone in an oven in the past and that he once found a 300-pound man in a “tiny little cabinet under a sink.” Det. Castillo was not aware of § 87(2)(b) height or weight. When shown a photograph of § 87(2)(b) stove, Det. Castillo stated that he recognized it as the stove that he opened. When asked if he recalled whether the stove had a clear window, Det. Castillo stated that if the stove was closed, the light inside would be off and he would be unable to see through the window. When asked whether someone who is 5’11” tall and weighs 130 pounds could fit in § 87(2)(b) stove, Det. Castillo stated that he could probably fit in the stove himself and noted that he is 6’ tall and weighs 200 pounds. When shown photographs of § 87(2)(b) kitchen, Det. Castillo stated that he did not search the cabinets above the counter, but noted that someone could hide in the cabinets under the counter.

Det. Stuart stated that she explained to § 87(2)(b) that the officers only were allowed to look where a subject could possibly hide and that § 87(2)(b) then said, “I guess you want to look in my microwave or my stove.” Det. Stuart noted that no officer opened the stove or any cabinets. Det. Risano stated that he did not observe where Det. Stuart and Det. Castillo searched.

The Warrant Investigative Data (Board Review 08) lists § 87(2)(b) height as § 87(2)(b) his weight as § 87(2)(b). On his unsealed arrest reports (Board Review 11), § 87(2)(b) height ranges from 5’7” to 6’ and his weight ranges from 130 to 175 pounds. The officers did not have a search warrant in their possession (Board Review 14).

New York State Criminal Procedure Law 530.70 states, “A bench warrant must be executed in the same manner as a warrant of arrest.” New York State Criminal Procedure Law 120.10 states, “The sole function of a warrant of arrest is to achieve a defendant’s court appearance.” See Board Review 12.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation F – Abuse of Authority: Detective Tina Stuart refused to provide her shield number to § 87(2)(b)

Allegation G – Abuse of Authority: Detective Daniel Castillo refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that while she, Det. Stuart, and Det. Castillo were standing in her foyer area, she asked them for their shield numbers collectively (“I need your badge numbers.”) Det. Stuart allegedly ignored § 87(2)(b) and did not provide her name or shield number. Det. Castillo spelled his name for § 87(2)(b) (which she recalled as “Castille” or “Castilel”) and allegedly provided his shield number as “3291.”

§ 87(2)(b) stated that § 87(2)(b) asked Det. Castillo for his name and shield number and did not know how Det. Castillo responded to this request or whether Det. Castillo provided his name or shield number to § 87(2)(b) did not hear § 87(2)(b) request any officer’s name or shield number and did not hear any officer provide his or her name or shield number to § 87(2)(b)

Det. Stuart, whose shield number is “3291” (Board Review 05), stated that § 87(2)(b) asked her for her name and shield number and that she replied, “Det. Stuart, 3291,” and that she asked Det. Castillo for his name and shield number and he replied, “Det. Castillo, 212.” Det. Stuart stated that Det. Castillo did not provide her shield number as his own and that he had no reason to do so. Det. Stuart denied refusing to provide her name and shield number to § 87(2)(b)

Det. Castillo, whose shield number is “212” (Board Review 07), stated that he provided his name and shield number verbally to § 87(2)(b) upon her request and that he did not know Det. Stuart’s shield number by heart. Det. Castillo stated that he did not provide Det. Stuart’s shield number as his own and had no reason to do so. Det. Castillo did not know how § 87(2)(b) phrased her request, whether Det. Stuart provided her name or shield number to § 87(2)(b) or how Det. Stuart responded to § 87(2)(b) request.

Det. Risano did not recall hearing § 87(2)(b) ask Det. Stuart or Det. Castillo for their names or shield numbers or hearing either of them refuse to provide their names or shield numbers to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date